IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation	)	
Plaintiff,	)	No. 2:00-CV-2041-AJS
v.	)	
PLAZA ENTERTAINMENT, INC., et al.	)	
Defendants	)	

VON BERNUTH'S SUPPLEMENTAL RESPONSE ON ACCEPTANCE OF GUARANTY

WRS does not contest that it failed to give notice that it was accepting Mr. von Bernuth's guaranty. Contrary to WRS's argument this circumstance is fatal to its claim.

In reality, there can be no dispute that Mr. von Bernuth executed the Services Agreement before WRS did. Not only does Mr. von Bernuth state as much in his Second Affidavit (see ¶5), but his attestation is born out on the face of the Services Agreement itself. Examination of the Services Agreement (Exhibit A hereto) shows that it was executed in counterparts, not contemporaneously. Moreover, the signatures of Plaza, Mr. Parkinson and Mr. Von Bernuth appear on one page without the signature of WRS, and the signatures for Mr. Parkinson, Mr. von Bernuth and WRS appear on a separate page without the signature of Plaza. (*See* Services Agreement.) Thus it is obvious that Mr. Parkinson and Mr. von Bernuth executed the Agreement first and that the page with their signatures on it was then separately executed by WRS and Plaza. That is the only scenario that could account for the physical alignment of the signatures on the counterparts.

Pennsylvania law is clear that notice of acceptance can be dispensed with only if the guaranty is contemporaneous with the acceptance by the ***obligee*** (in this case WRS) of the promise made by the primary obligor (in this case Plaza). In *Acme Manufacturing Company v. Reed*, 197 Pa. 359, 47 A. 205 (1900), the offer of guaranty was written on the order form that was filled out and executed by the primary obligor. Because the offer had not been contemporaneously accepted by the obligee, however, notice of acceptance was required and the lack of it rendered the guaranty unenforceable. *See id.* at 362-65. Again, in *Coe v. Buehler*, 110 Pa. 366, 5 A. 20 (1885), the Pennsylvania Supreme Court explained that where the contract that a guarantor proposes to guaranty had not been executed or accepted by the obligee at the time the guarantor signed the guaranty, notice of acceptance was required. *See id.* at 369-70, 5 A. at 20. The cases cited by WRS are simply inapposite to a circumstance where there was no contemporaneous execution by Mr. von Bernuth and WRS and no subsequent notice of acceptance.

In sum, it is plain that Mr. von Bernuth signed the Services Agreement first and that WRS signed it thereafter. WRS's failure to give notice of acceptance to Mr. von Bernuth therefore provides a complete defense to WRS's claim. Indeed, given the absence of any factual dispute, this appears to be a legal point as to which Mr. von Bernuth would be entitled to a summary judgment as a matter of law if the Court grants the pending Motion to Reopen.

Respectfully submitted,

___/s/ James R. Walker__________s

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Date: December ____, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by the Court's ECF/CM system and by U.S. First Class Mail, Postage Pre-Paid, upon the on this ____ day of December, 2007, as follows:

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/s/ James R. Walker___________